

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

IN RE CHARGE OF ADA BASSEY)	
)	
UNITED STATES OF AMERICA,)	
COMPLAINANT,)	
)	
v.)	
)	8 U.S.C. § 1324b PROCEEDING
KAJAX ENGINEERING, INC.)	
a Virginia Corporation,)	
RESPONDENT.)	OCAHO CASE No. 93B00021
)	
)	

CONSENT FINDINGS AND ORDER

Pursuant to the Rules of Practice and Procedure for the Office of the Chief Administrative Hearing Officer (OCAHO), the Office of Special Counsel for Immigration Related Unfair Employment Practices (Special Counsel), and Kajax Engineering, Inc. (Respondent) file this Consent Findings and Order with the Court. 56 Fed. Reg. 50,049, 50,054 (1991) (amending 28 C.F.R. § 68.12, and renumbering as 28 C.F.R. § 68.14).

CONSENT FINDINGS

1. This action was brought by the Special Counsel to enforce the provisions of 8 U.S.C. § 1324b(a).

2. On January 29, 1993, the Special Counsel filed a Complaint with OCAHO charging Kajax Engineering, Inc. with two counts of unfair immigration-related employment practices, specifically discriminating against two individuals with respect

to their hiring on the basis of their citizenship status in violation of 8 U.S.C. § 1324b(a)(1).

3. The Complaint alleges, in part, that:

¶ 9. In June 1991, Ms. Ada E. Bassey applied for the position of Supervisor on a Single Family Claims Project contract awarded to the Respondent by the United States Department of Housing and Urban Development.

¶ 10. At the time of her application, Ms. Bassey held this position with the incumbent United States Department of Housing and Urban Development contractor, i.e., Mitchell\Titus.

¶ 11. In June 1991, Ms. Ifeanyi Uma applied for the position of Accounting Technician on a Single Family Claims Project contract awarded to the Respondent by the United States Department of Housing and Urban Development.

¶ 12. At the time of her application, Ms. Uma held this position with the incumbent United States Department of Housing and Urban Development contractor, i.e., Mitchell\Titus.

¶ 13. On or about July 16, 1991, Mr. Alan Drimmer, Respondent's employee, interviewed Ms. Bassey for the position of Supervisor on the Single Family Claims Project contract recently awarded to the Respondent.

¶ 14. On or about July 16, 1991, Mr. Alan Drimmer, Respondent's employee, interviewed Ms. Uma for a position with the Respondent on the Single Family Claims Project contract recently awarded to the Respondent.

¶ 15. On or about July 26, 1991, the Respondent, through Mr. Drimmer, telephoned Ms. Bassey, at her place of employment, and left a message that she could not be hired by the Respondent due to her non-citizenship status.

¶ 16. On or about July 26, 1991, the Respondent, through Mr. Drimmer, telephoned Ms. Uma, at her place of employment, and told her that she could not be hired by the Respondent due to her non-citizenship status.

¶ 21. During its investigation, the Special Counsel discovered that the Respondent refused to hire Ms. Ifeanyi Uma, an individual similarly situated, because of her citizenship status.

4. On or about February 26, 1993, Respondent filed an Answer with OCAHO denying the allegations of the Special Counsel's Complaint. Respondent's Answer specifically denies that it discriminated against Ms. Bassey and Ms. Uma because of their non-U.S. citizenship status.

CONSENT ORDER

5. Respondent will pay a civil penalty in the amount of one thousand six hundred dollars (\$1,600.00). Within twenty days of the Court's approval of this Consent Order, ^{or July 1, 1993, whichever is later, *KF*} Respondent will ^{*TMFM*} deliver to the Special Counsel a certified check in the amount of one thousand six hundred dollars (\$1,600.00) payable to the United States Treasury. The Respondent's payment of this civil penalty does not constitute an admission by the Respondent that it violated 8 U.S.C. § 1324b(a)(1).

6. Within twenty days of the Court's approval of this Consent Order, ^{*KF* or July 1, 1993, whichever is later, *TMFM*} Respondent will issue a check payable to Ms. Ada E. Bassey in the amount of \$2,792.31. Respondent will deliver this check to the Special Counsel and the Special Counsel will forward the check to Ms. Bassey. Ms. Bassey's cashing of the check is her acknowledgement that she waives, releases and covenants not to sue or commence any proceeding against the Respondent with respect to any matters contained within the allegations of the charge she filed with the Arlington County Human Rights Commission.

7. Within twenty days of the Court's approval of this Consent Order, ^{KE} or July 1, 1993, whichever is later, ^{MFM KE} Respondent will issue a check payable to Ms. Ifeanyi Uma in the amount of \$2,850.00. Respondent will deliver this check to the Special Counsel and the Special Counsel will forward the check to Ms. Uma. Ms. Uma's cashing of the check is her acknowledgement that she waives, releases and covenants not to sue or commence any proceeding against the Respondent with respect to any matters relating to her non-hire by the Respondent in 1991.

8. Respondent will conduct its hiring practices in a manner that does not discriminate on the basis of an individual's citizenship status, unless such discrimination is specifically required in order to comply with a law, regulation, executive order, or Federal, State, or local government contract, or unless the Attorney General determines such discrimination is essential for Respondent to do business with an agency or department of the Federal, State or local government.

9. Respondent will post Notice A (attached) at its Arlington, Virginia offices in a place visible to all employees/job applicants. Notice A will be posted for a period of one year beginning ten days following the Court's approval of this Consent Order.

10. Within six months of the Court's approval of this Consent Order, Respondent will educate its personnel concerning their responsibilities under 8 U.S.C. § 1324b. Respondent, at

its option, may accomplish this education by either of the following two methods:

- a) Having an employee attend a seminar, of Respondent's choosing, concerning an employer's obligations under the Immigration Reform and Control Act of 1986. Such a seminar must include a presentation involving the unfair employment practices provisions of 8 U.S.C. § 1324b; or
- b) Having all employees involved in the hiring process view an educational film on IRCA's unfair employment practices. The film will be designated by the Special Counsel.

Respondent will certify, in writing, to the Court that the education requirements of this paragraph have been met within six months of the Court's approval of the Consent Order.

11. The decision and order based upon the consent findings shall have the same force and effect as a decision and order made after a full hearing.

12. The entire record on which this decision and order is based shall consist solely of the Complaint and Notice of Hearing.

13. The Special Counsel and Respondent waive any further procedural steps before this Court.

14. The Special Counsel and the Respondent waive any right to challenge or contest the validity of the decision and order entered into in accordance with this Consent Order.

15. The Special Counsel and the Respondent agree to bear their own costs, attorney fees and other expenses incurred in this action.

APPROVED BY THE COURT:

Joseph E. McGuire
Joseph E. McGuire

Date: April 29, 1993

Administrative Law Judge
Office of the Chief Administrative Hearing Officer

Submitted by:

COUNSEL FOR THE UNITED STATES:

April 28, 1993
Date

WILLIAM HO-GONZALEZ
Special Counsel

By:

Kirk M. Flagg
Trial Attorney

COUNSEL FOR THE RESPONDENT

31 April 1993
Date

By:

Maureen F. Moore
Maureen F. Moore
Locke Purnell Rain Harrell

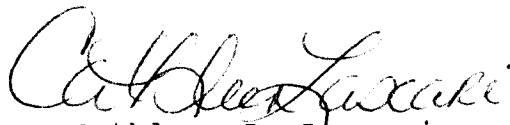
CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 1993, I have served copies of the foregoing Consent Findings and Order to the following persons at the addresses shown, in the manner indicated:

Office of the Chief Administrative Hearing Officer
Skyline Tower Building
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041
(original hand delivered)

Kirk M. Flagg, Esquire
Office of Special Counsel for Immigration
Related Unfair Employment Practices
P.O. Box 27728
Washington, D.C. 20038-7728
(one copy sent via regular mail)

Maureen F. Moore, Esquire
Locke Purnell Rain Harrell
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776
(one copy sent via regular mail)



Cathleen L. Lascari
Legal Technician to
Joseph E. McGuire
Administrative Law Judge
Department of Justice
Office of the Chief Administrative
Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, Virginia 22041
(703) 305-1043

THE IMMIGRATION REFORM AND CONTROL ACT (IRCA) PROHIBITS EMPLOYMENT DISCRIMINATION

WHAT YOU SHOULD KNOW

Under IRCA, when hiring, discharging, or recruiting or referring for a fee, employers with four or more employees may not:

Discriminate because of national origin against U.S. citizens, U.S. nationals and authorized aliens. (Employers of 15 or more employees should note that the ban on national origin discrimination against any individual under Title VII of the Civil Rights Act of 1964 continues to apply.)

Discriminate because of citizenship status against U.S. citizens, U.S. nationals, and the following classes of aliens with work authorization: permanent residents, temporary residents (that is, individuals who have gone through the legalization program), refugees, and asylees.

Employers can demonstrate compliance with the law by following the verification (I-9 form) requirements and treating all new hires the same. This includes the following steps:

Establish a policy of hiring only individuals who are authorized to work. A "U.S. citizens only" policy in hiring is illegal. An employer may require U.S. citizenship for a particular job only if it is required by federal, state, or local law, or by government contract.

Complete the I-9 Form for all new hires. This form gives employers a way to establish that the individuals they hire are authorized to work in the United States.

Permit employees to present any document or combination of documents acceptable by law. Employers cannot prefer one document over others for purposes of completing the I-9 Form. Authorized aliens do not all carry the same documents. For example, not all aliens who are authorized to work are issued "green cards." As long as the documents are allowed by law and appear to be genuine on their face and to relate to the person, they should be accepted.

IRCA established the Office of Special Counsel for Immigration Related Unfair Employment Practices to enforce the IRCA antidiscrimination provision. Discrimination charges are filed with this Office. Charges or written inquiries should be sent to: The Office of Special Counsel for Immigration Related Unfair Employment Practices, P.O. Box 27728, Washington, D.C. 20038-7728. The Office can also be reached by calling 1-800-255-7688 (toll free) or 202-616-5594; 1-800-237-2515 or 202-616-5525 (TDD device for the hearing impaired). For questions about Title VII, please contact the Equal Employment Opportunity Commission at 1-800-USA-EEOC (toll free) or 202-634-7057 (TDD).